

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 13, 2006 Session

**HARPETH VALLEY UTILITIES DISTRICT OF DAVIDSON AND
WILLIAMSON COUNTIES, TENNESSEE v. JAMES A. AND PATRICIA
W. CHARRON**

**Appeal from the Circuit Court for Williamson County
No. 01551 Timothy L. Easter, Judge**

No. M2006-00035-COA-R3-CV - Filed on April 26, 2007

A utilities district filed a condemnation suit to acquire water line easements across privately- owned land. The district deposited \$12,697 into the court, representing its estimate of the value of the easements, and that amount was disbursed to the landowners. However, the landowners were not satisfied with the offer and asked for a jury trial to determine the value of the easements. The jury awarded them slightly less than the deposited amount. The court entered judgment on the jury verdict, declared the district to be the prevailing party, and exercised its discretionary power under Tenn. R. Civ. P. 54.04(2) to order the landowners to pay one-half of the district's discretionary costs. On appeal, the landowners do not dispute the correctness of the jury's verdict, but argue that the trial court erred in assessing discretionary costs against them. We affirm the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Ralph W. Mello, Nashville, Tennessee, for the appellants James A. and Patricia W. Charron.

L. Marshall Albritton, Nashville, Tennessee, for the appellee, Harpeth Valley Utilities District of Davidson and Williamson Counties, Tennessee.

OPINION

I. EMINENT DOMAIN

The Harpeth Valley Utilities District ("the District") needed to extend its waterlines and authorized its management to acquire easements for that purpose. On September 10, 2001, the District filed a Petition for Condemnation in the Circuit Court of Williamson County against James

and Patricia Charron (“Landowners”). The District asked the court to grant it a twenty foot wide permanent easement on a stretch of the Landowners’ front yard adjacent to the public right of way on Murray Lane in Brentwood, and twenty-foot wide temporary construction easements on each side of the permanent easement.

The utility estimated the value of both easements to total \$12,697.60, and it deposited that sum with the Clerk of Court, pursuant to Tenn. Code Ann. §§ 29-17-801 & -802. The Landowners signed an agreed order of possession, which gave the district immediate access to the easements. The agreed order stated, among other things, that

The property over and on which [the easements] are located is to remain the property of the [Landowners], and may be used for any lawful purpose or purposes desired after the construction of all improvements, provided such uses do not destroy, weaken or damage the easements or the transmission pipelines and appurtenances thereto, or interfere with the use, operation or maintenance thereof.

On November 16, 2001, the money deposited into the court was paid to the Landowners pursuant to an agreed order of disbursement. The order recited that payment and receipt of the funds “shall not be deemed to prejudice the rights of the [Landowners] to assert such additional or other damages as they may have suffered or that they may hereafter suffer as a result of this condemnation and actions taken with respect to the condemnation, or prejudice the rights of the District to a reimbursement of any portion of the funds. All other matters are reserved.” See Tenn. Code Ann. § 29-17-806. The water line was subsequently installed and placed into operation, and the temporary easements were abandoned.

Since the Landowners believed that they were entitled to greater compensation than the District tendered, they chose to pursue their right to have a jury evaluate their claim. After some preliminary jockeying and an exchange of interrogatories, it became clear that the Landowners were not claiming any damages from loss of use of their property, alterations to the property rendered necessary because of acquisition or use of the easements, or any sort of incidental damages. Thus, the case went to trial on a single issue: what was the fair market value of the easements?

Prior to trial, the District moved the court to prohibit the introduction into evidence of the amount it had tendered for the easement. The District noted that our courts have long held that evidence as to how much the condemning authority decided to pay into court is not relevant in condemnation proceedings and should not be presented to the jury. *Smith County v. Eatherly*, 820 S.W.3d 366, 369 (Tenn. Ct. App. 1991); *Parker v. Park*, 437 S.W.2d 251, 253 (Tenn. Ct. App. 1968); *Clinton Livestock Auction Co. v. City of Knoxville*, 376 S.W.2d 743, 744-45 (Tenn. Ct. App. 1963). See also Tenn. Code Ann. § 29-17-701(b) (“Such payment to the property owner or into court shall in no way limit or fix the amount to be allowed under subsequent proceedings in such cases”). The Landowners did not oppose the motion, and the trial court granted it.

At trial, both parties called property appraisers as expert witnesses on the value of the easements. The District's witness testified to a value of \$7,619 for the easements. The Landowners' witness testified to a value of \$38,000.¹ The jury placed the fair market value of the permanent easements at \$6,612 and the fair market value of the temporary easements at \$6,000. The total of \$12,612 was \$85.60 less than the Landowners had been paid. The trial court approved the jury verdict, ordered the Landowners to repay \$85.60 to the utility pursuant to Tenn. Code Ann. § 29-17-806, and taxed court costs to the Landowners.

The District subsequently moved the court to assess discretionary costs against the Landowners, pursuant to Tenn. R. Civ. P. 54.04. It submitted a memorandum in support of its motion, accompanied by an itemized and verified bill of discretionary costs, which included court reporter's fees, the expert witness's fees, and exhibit preparation fees. The total discretionary costs came to \$8,831.38.

The Landowners filed a response in opposition, arguing that the District was not the prevailing party and, thus, was not entitled to an award of discretionary costs. However, the trial court did not agree, and it granted the District's motion in part, stating that "the District is the prevailing party in this case" and, in accordance with the equities of this case, the Landowners were ordered to pay half of the District's total discretionary costs, a total of \$4,415.69. This appeal followed.

The District has not appealed the court's decision to award it only half its discretionary costs and, instead, asks that we affirm the court's judgment.

II. STANDARDS FOR ASSESSING DISCRETIONARY COSTS

The Landowners do not appeal the jury's finding as to the value of the easement. The sole issue in this appeal is the trial court's decision to assess half of the District's discretionary costs against the Landowners. As both parties recognize, Tennessee Code Annotated § 29-17-812 of the eminent domain statutes governs the award of discretionary costs in this type of lawsuit. It provides:

(a)(1) If the amount of compensation awarded at the trial shall exceed the amount assessed by the condemner and deposited with the clerk, then the bill of costs prepared by the clerk shall be taxed against the condemner. If the amount of compensation awarded at the trial is not in excess of the amount assessed by the condemner and deposited with the clerk, then the bill of costs prepared by the clerk may be taxed against the defendants.

¹The disparity in values was largely due to the fact that the Landowners took the position that they were entitled to receive 100% of the fair market value of the land taken for permanent easements, while the District contended that since the installation of the water line did not deprive the Landowners of the beneficial use of the land under which the easement was located, they were not entitled to receive the full fee value of that land.

(2) Rule 54.04 of the Tennessee Rules of Civil Procedure shall govern the taxing of any additional costs.

The costs included in the clerk's bill of costs, as described in subsection (1) of the statute, are not at issue in the case before us. Instead, it is the taxing of other "additional" costs, also known as discretionary costs. The statute directs us to Tenn. R. Civ. P. 54.04 for the governing principles applicable to the taxing of discretionary costs. That rule reads in pertinent part,

(2) Costs not included in the bill of costs prepared by the clerk are allowable only in the court's discretion. Discretionary costs allowable are: reasonable and necessary court reporter expenses for depositions or trials, reasonable and necessary expert witness fees for depositions (or stipulated reports) and for trials, reasonable and necessary interpreter fees for depositions or trials, and guardian ad litem fees; travel expenses are not allowable discretionary costs . . .

The rule makes it clear that the award of discretionary costs is within the court's discretion. Further, Tenn. Code Ann. § 20-12-119 gives the judge in all civil cases the authority to apportion the cost between the litigants as "the equities of the case demand." Accordingly, trial courts are vested with wide discretion in awarding discretionary costs. *Perdue v. Green Branch Mining Co.*, 837 S.W.2d 56, 60 (Tenn. 1992); *Stalsworth v. Grummons*, 36 S.W.3d 832, 835 (Tenn. Ct. App. 2000); *Sanders v. Gray*, 989 S.W.2d 343, 345 (Tenn. Ct. App. 1999).

Since the trial courts are endowed with wide discretion in awarding discretionary costs, such an award will not be reversed on appeal except upon a showing that the trial court abused its discretion. *Perdue v. Green Branch Mining Co.*, 837 S.W.2d at 60; *Lock v. National Union Fire Insurance Co.*, 809 S.W.2d 483, 490 (Tenn. 1991); *Mix v. Miller*, 27 S.W.3d 508, 516 (Tenn. Ct. App. 1999); *Sanders v. Gray*, 989 S.W.2d at 345.

Where a decision is said to lie within the trial court's discretion, appellate review includes determining whether the trial court correctly identified and applied the appropriate legal standards and based its decision on the evidence. *Nichols v. Nichols*, 792 S.W.2d 713, 716 (Tenn. 1990); *State ex rel. Vaughn v. Kaatrude*, 21 S.W.3d 244, 248 (Tenn. Ct. App. 2000); *D. v. K.*, 917 S.W.2d 682, 685 (Tenn. Ct. App. 1995).

Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to the propriety of the decision made." A trial court abuses its discretion only when it "applies an incorrect legal standard, or reaches a decision which is against logic or reasoning or that causes an injustice to the party complaining." The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court.

Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001) (citations omitted).

The legal standards applicable to a decision on discretionary costs have been set out as follows:

When deciding whether to award discretionary costs under Tenn. R. Civ. P. 54.04(2), the courts should (1) determine whether the party requesting the costs is the “prevailing party,” (2) limit awards to the costs specifically identified in the rule, (3) determine whether the requested costs are necessary and reasonable, and (4) determine whether the prevailing party has engaged in conduct during the litigation that warrants depriving it of the discretionary costs to which it might otherwise be entitled.

Massachusetts Mutual Life Insurance Co. v. Jefferson, 104 S.W.3d 13, 35-36 (Tenn. Ct. App. 2002); *see also Trundle v. Park*, 210 S.W.3d 575, 582 (Tenn. Ct. App. 2006); *Waggoner Motors, Inc. v. Waverly Church of Christ*, 159 S.W.3d at 65-66.

Courts should, and generally do, award discretionary costs if they are reasonable and if the prevailing party has filed a timely, properly supported motion. *Anderson v. American Limestone Co., Inc.*, 168 S.W.3d 757, 764 (Tenn. Ct. App. 2004); *Massachusetts Mutual Life Insurance Co. v. Jefferson*, 104 S.W.3d at 35; *Scholz v. S.B. International, Inc.*, 40 S.W.3d 78, 84 (Tenn. Ct. App. 2000). However, a party is not automatically entitled to discretionary costs under Tenn. R. Civ. P. 54.04(2) simply because it prevailed. The particular circumstances of the case and the equities therein should be considered by the court and may influence the decision. *Stalsworth v. Grummons*, 36 S.W.3d at 835. Within the parameters of the applicable legal principles, the trial court is free to apportion costs between the litigants as the equities of the case demand. *Perdue v. Green Branch Mining Co.*, 837 S.W.2d at 60.

The purpose of Rule 54.04(2) is not to punish the losing party, and courts should not apply it with that goal in mind. *Massachusetts Mutual Life Insurance Co. v. Jefferson*, 104 S.W.3d at 36. It was designed as a way to attempt to make the prevailing party whole. *Massachusetts Mutual Life Insurance Co. v. Jefferson*, 104 S.W.3d at 33, *citing Scholz v. S.B. International, Inc.*, 40 S.W.3d at 85; *see also National Union Fire Ins. Co.*, 809 S.W.2d at 490.

III. ANALYSIS

The Landowners insist that they rather than the District should be considered the prevailing party. Their argument rests on the fact that they received a judgment in the trial court and in the disparity between the value of the easements as found by the jury (\$12,612) and the value the District’s expert testified to (\$7,619). We do not believe that prevailing party should be identified by the difference between the jury’s determination of value and the testimony of the parties’ experts. If we applied that test in this case, the Landowners could not be the prevailing party because the jury award was significantly less than the amount testified to by the Landowners’ expert (\$38,000).

Additionally, the District brought this lawsuit and obtained the relief it sought. That is, it obtained the easements for slightly less than the amount it had offered as fair market value. This type of lawsuit presumes that the condemnor will be required to pay the landowner the fair value of the land or interest in land it is condemning. Consequently, an interpretation that every time a condemnor is ordered to pay the landowner that landowner would be the prevailing party is unreasonable.

“Prevailing party” is defined as the party to a suit “who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of his original conclusion.” BLACK’S LAW DICTIONARY (Rev. 4th ed) (1968). The party who prevails is the party that succeeds on a significant issue in the litigation.²

If the purpose of the rule on discretionary costs is to help make the prevailing party whole, it is important to examine why the parties incurred the costs of the trial. In the case before us, the District offered and paid into court an amount that was determined to be a little more than the fair market value of the easements. It was the Landowners’ refusal to accept that amount and their conviction that the value was much greater that necessitated the trial, including the use of experts. The Landowners argue that since “the amount a petitioner decides to pay into court is irrelevant in a condemnation proceeding,” *Smith County v. Eatherly*, 820 S.W.2d at 369, the fact that the District deposited more than the amount the jury determined was the value cannot be considered in determining who was the prevailing party.

The Landowners are mistaken in this argument. While the amount deposited cannot be considered in determining the value of the interest in land taken, it is relevant to the question of allocation of the costs of litigation. As stated earlier, Tenn. Code Ann. § 29-7-812 specifically directs the court to consider the difference between the amount of compensation awarded at trial and the amount deposited with the clerk by the condemnor in assessing costs included in the bill of costs. “If the amount of compensation awarded at trial is not in excess of the amount assessed by the condemner and deposited with the clerk, then the bill of costs prepared by the clerk may be taxed against the defendants.” Tenn. Code Ann. § 29-7-812(a)(1).

The District has suggested that the situation of a condemnor in a condemnation case is analogous to that of a party that makes a formal offer of judgment under Tenn. R. Civ. P. 68. Under that rule, either party may offer to settle a case for a specific amount. If the other party accepts the offer, judgment is rendered accordingly. If the other party rejects the offer, however, the case proceeds. If the judgment then obtained is less than what was offered, “the offeree shall pay all costs accruing after the making of the offer.” The Rule specifically states that “[a]n offer not accepted shall

²The meaning of the term “prevailing party” for purposes of entitlement to attorney’s fees in cases brought pursuant to 42 U.S.C. § 1983 has been the subject of many opinions, including a number from the United States Supreme Court. See *Consolidated Waste Systems, LLC v. Metropolitan Government of Nashville and Davidson County*, No. M2002-02582-COA-R3-CV, 2005 WL 1541860, *46-47 (Tenn. Ct. App. June 30, 2005). However, many of those definitions are specific to the provision authorizing attorney’s fees, which requires a determination of substantial rights of the parties in the context of this civil rights statute.

be deemed withdrawn and evidence thereof is not admissible except in the proceeding to determine costs.”³

For purposes of assessing discretionary costs, we agree with the trial court that the District was the prevailing party. The costs requested all appear to fall within the parameters of the rule, and the Landowners do not suggest that they are either excluded from the rule or not necessary and reasonable. The trial court did not assess all of the District discretionary costs incurred by the District. We can find no basis upon which to hold that the court’s assessment was outside its discretion in view of the circumstances and the equities of the case.

Tenn. Code Ann. § 29-17-812(a)(2) indicates that discretionary costs may be awarded in eminent domain cases, and it directs us to Tenn. R. Civ. P. 54.04. The trial court applied the correct legal standards, and its assessment is neither contrary to the evidence or inequitable. Accordingly, we affirm the judgment of the trial court.

This case is remanded to the Circuit Court of Williamson County for any further proceedings necessary. The costs on appeal are taxed to the appellants, James and Patricia Charron.

PATRICIA J. COTTRELL, JUDGE

³Even in the absence of the above quoted provision of Rule 68, Offers of Judgment would presumably remain inadmissible under Rule 408 of the Tennessee Rules of Evidence, which excludes the admission of offers of compromise for the purpose of proving liability or invalidity of a civil claim or the amount of that claim.